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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066-5717-02]

RIN 0648-XE327

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason General category bluefin tuna quota transfer and retention limit adjustment.

SUMMARY: NMFS is transferring 24.3 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the General category December 2016 subquota period to the January 2016 subquota period (from January 1 through March 31, 2016, or until the available subquota for this period is reached, whichever comes first). NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit for the January 2016 subquota period to three large medium or giant BFT from the default retention limit of one. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: The quota transfer is effective January 1, 2016. The General category retention limit adjustment is effective January 1, 2016, through March 31, 2016.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

Inseason Transfer to the General Category

Earlier this year, NMFS implemented a final rule that increased the U.S. BFT quota and subquotas per ICCAT Recommendation 14-05 (80 FR 52198, August 28, 2015). The base quota for the General category is 466.7 mt. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. Although it is called the “January” subquota, the regulations allow the General category fishery under this quota to continue until the subquota is reached or March 31, whichever comes first. Based on the General category base

quota of 466.7 mt, the subquotas for each time period are as follows: 24.7 mt for January; 233.3 mt for June through August; 123.7 mt for September; 60.7 mt for October through November; and 24.3 mt for December. Any unused General category quota rolls forward within the fishing year, which coincides with the calendar year, from one time period to the next, and is available for use in subsequent time periods.

Quota Transfer

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering determination criteria provided under § 635.27(a)(8), including five new criteria recently added in Amendment 7. The determination criteria are: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds; optimizing fishing opportunity; accounting for dead discards, facilitating quota monitoring, supporting other fishing

monitoring programs through quota allocations and/or generation of revenue; and support of research through quota allocations and/or generation of revenue.

NMFS has considered the determination criteria regarding inseason adjustments and their applicability to the General category fishery for the January 2016 subquota period, including, but not limited to, the following: Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock, biological samples collected from BFT landed by General category fishermen and provided by tuna dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT would support the collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the winter fishery in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; and the estimated amounts by which quotas for other gear categories of the fishery might be exceeded. General category landings in the winter BFT fishery are highly variable and depend on availability. Commercial-sized BFT tuna are typically available in January and may continue to be through March.

Without a quota transfer from December 2016 to January 2016 for the General category at this time, the quota available for the January through March 2016 period would be 24.7 mt (5.3 percent of the General category quota), and participants would have to stop BFT fishing

activities once that amount is met, while commercial-sized BFT may remain available in the areas where General category permitted vessels operate. Transferring the 24.3-mt quota available for December 2016 (5.2 percent of the General category quota) would result in 49 mt (10.5 percent of the General category quota) being available for the January subquota period. This quota transfer would provide additional opportunities to harvest the U.S. BFT quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter BFT fishery.

Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations. This transfer would be consistent with the quotas recently established and analyzed in the BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments, and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents.

NMFS also anticipates that some underharvest of the 2015 adjusted U.S. BFT quota will be carried forward to 2016 to the Reserve category, in accordance with the regulations implementing Amendment 7. This, in addition to the fact that any unused General category quota will roll forward to the next subperiod within the calendar year, makes it possible that General category quota will remain available through the end of 2016 for December fishery participants, even with the quota transfer. NMFS also may choose to transfer unused quota from the Reserve or other categories, inseason, based on consideration of the determination criteria, as

NMFS did for late 2015 (80 FR 68265, November 4, 2015; 80 FR 74997, December 1, 2015).

Therefore, NMFS anticipates that General category participants in all areas and time periods will have opportunities to harvest the General category quota. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, consider the expected increases in available 2016 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

Based on the considerations above, NMFS is transferring 24.3 mt of General category quota allocated for the December 2016 period to the January 2016 period, resulting in a subquota of 49 mt for the January 2016 period and a subquota of 0 mt for the December period. NMFS will close the General category January fishery when the adjusted January period subquota of 49 mt has been reached, or it will close automatically on March 31, 2016, whichever comes first, and it will remain closed until the General category fishery reopens on June 1, 2016.

Adjustment of General Category Daily Retention Limit

Unless changed, the General category daily retention limit starting on January 1 would be the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) per vessel per day/trip (§ 635.23(a)(2)). This default retention limit would apply to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT. For the 2015 fishing year, NMFS adjusted the daily retention limit from the default level of one large medium or giant BFT to three large medium or giant BFT for the January subquota period (79 FR 77943, December 29, 2014), which closed March 31, 2015; four large medium or giant BFT for the June through August period (80 FR 27863, May 15, 2015) as well as September 1 through November 27, 2015

(80 FR 51959, August 27, 2015); and three large medium or giant BFT for November 28 through December 31, 2015, or until the available General category quota is reached, whichever comes first (80 FR 74997, December 1, 2015).

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above. NMFS has considered the relevant criteria and their applicability to the General category BFT retention limit for the January 2016 subquota period. These considerations include, but are not limited to, the following:

As described above with regard to the quota transfer, additional opportunity to land BFT would support the collection of a broad range of data for the biological studies and for stock monitoring purposes. Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock, additional opportunity to land BFT would support the collection of a broad range of data for the biological studies and for stock monitoring purposes. Regarding the effects of the adjustment on BFT rebuilding and overfishing and the effects of the adjustment on accomplishing the objectives of the fishery management plan, as this action would be taken consistent with the previously implemented and analyzed quotas, and it is not expected to negatively impact stock health or otherwise affect the stock in ways not previously analyzed. It is also supported by the Environmental Analysis for the 2011 final rule regarding General and Harpoon category management measures, which increased the General category maximum daily retention limit from three to five fish (76 FR 74003, November 30, 2011).

Regarding the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made, in 2012, 2013, and 2014, the available January subquota (23.1 mt) was reached on January 22, February 15, and March 21, respectively, under a limit of two large medium or giant BFT, and in each of these years the General category did not reach its available quota by the end of the year. For 2015, the adjusted January subquota of 45.7 (reflecting the first of the inseason actions described above as well as implementation of the final BFT quota rule) was not met under a daily retention limit of three large medium or giant BFT.

As noted above, commercial-sized BFT are typically available in January and may continue to be through March. Considering this information and the transfer of the December 2016 subquota to the quota for the January 2016 time period (for an adjusted total of 49 mt), the default one-fish limit likely would be overly restrictive. Increasing the daily retention limit from the default may mitigate rolling an excessive amount of unused quota from one time-period subquota to the next and thus help maintain an equitable distribution of fishing opportunities. Although NMFS has the authority to set the daily retention limit to up to five fish, the rate of harvest of the January subquota could be accelerated under a high limit (and higher fish availability), and result in a relatively short fishing season. A short fishing season may preclude or reduce fishing opportunities for some individuals or geographic areas because of the migratory nature and seasonal distribution of BFT.

Based on these considerations, NMFS has determined that a three-fish General category retention limit is warranted for the January 2016 subquota. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an

equitable distribution of fishing opportunities, help optimize the ability of the General category to harvest its full quota, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the 2006 Consolidated HMS FMP and amendments.

Therefore, NMFS increases the General category retention limit from the default limit (one) to three large medium or giant BFT per vessel per day/trip, effective January 1, 2016, through March 31, 2016, or until the 49-mt January subquota is harvested, whichever comes first.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, during the January 2016 subquota period, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the day/trip limit of three fish applies and may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT, and applies to those vessels permitted in the General category, as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. General, HMS Charter/Headboat, Harpoon, and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov*. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustment or closure is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**.

In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer and daily retention limit for the January 2016 subquota time period is impracticable. NMFS could not have proposed these actions earlier, as it needed to consider and respond to updated data and information from the 2015 General category fishery, including during late 2015, in deciding to transfer the December 2016 quota to the January 2016 subquota period and selecting the appropriate retention limit for the January 2016 subquota period. If NMFS was to offer a public comment period now, after having appropriately considered that data, it would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriately high for the amount of quota available for the period.

Delays in increasing the daily retention limit would adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of

low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the designated time periods. Adjustment of the retention limit needs to be effective January 1, 2016, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to provide fishing opportunities for fishermen in geographic areas with access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(a)(4) and 635.27(a)(9), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 9, 2015

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National Marine Fisheries Service.

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